

Sub. S.B. 135  
As Passed by the Senate

**Topic:** Risk-limiting audit of election results and voter marked and voter verified paper ballots

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "To" insert "amend sections 1  
3505.21, 3506.02, 3506.07, 3506.19, 3506.21, and 3506.22 and to 2  
enact sections 3505.331 and 3506.022 of the Revised Code, and to 3  
amend sections 3506.05 and 3506.10 and to repeal section 3506.22 4  
of the Revised Code on January 1, 2019, to require the boards of 5  
elections to conduct audits of election results and, beginning in 6  
2019, to use only voting equipment that produces voter marked and 7  
voter verified paper ballots and to" 8

In line 6, after "**Section 1.**" insert "That sections 3505.21, 9  
3506.02, 3506.07, 3506.19, 3506.21, and 3506.22 be amended and 10  
sections 3505.331 and 3506.022 of the Revised Code be enacted to 11  
read as follows: 12

**Sec. 3505.21.** (A) As used in this section: 13

(1) "~~during~~ During the casting of the ballots" includes any 14  
time during which a board of elections permits an elector to vote 15  
an absent voter's ballot in person at the office of the board and 16  
any time ballots may be cast in a precinct polling place on the 17  
day of an election. 18

(2) "During the counting of the ballots" includes any time 19

during which the election officials count and tally ballots, make 20  
the official canvass of election returns, or conduct an audit 21  
under section 3505.331 of the Revised Code. 22

(B) At any primary, special, or general election, any 23  
political party supporting candidates to be voted upon at such 24  
election and any group of five or more candidates may appoint to 25  
the board of elections or to any of the precincts in the county or 26  
city one person, a qualified elector, who shall serve as observer 27  
for such party or such candidates during the casting of the 28  
ballots and during the counting of the ballots; provided that 29  
separate observers may be appointed to serve during the casting 30  
and during the counting of the ballots. No candidate, no uniformed 31  
peace officer as defined by section 2935.01 of the Revised Code, 32  
no uniformed state highway patrol trooper, no uniformed member of 33  
any fire department, no uniformed member of the armed services, no 34  
uniformed member of the organized militia, no person wearing any 35  
other uniform, and no person carrying a firearm or other deadly 36  
weapon shall serve as an observer, nor shall any candidate be 37  
represented by more than one observer at any one precinct or at 38  
the board of elections except that a candidate who is a member of 39  
a party controlling committee, as defined in section 3517.03 of 40  
the Revised Code, may serve as an observer. 41

(C) Any political party or group of candidates appointing 42  
observers shall notify the board of elections of the names and 43  
addresses of its appointees and the precincts at which they shall 44  
serve or that they will serve at the board of elections. 45  
Notification of observers appointed to serve on the day of an 46  
election shall take place not less than eleven days before the day 47  
of the election on forms prescribed by the secretary of state and 48  
may be amended by filing an amendment with the board of elections 49  
at any time until four p.m. of the day before the election. 50

Notification of observers appointed to serve at the office of the board during the time absent voter's ballots may be cast in person shall take place not less than eleven days before absent voter's ballots are required to be ready for use pursuant to section 3509.01 of the Revised Code on forms prescribed by the secretary of state and may be amended by filing an amendment with the board of elections at any time until four p.m. of the day before the observer is appointed to serve. The observer serving on behalf of a political party shall be appointed in writing by the chairperson and secretary of the respective controlling party committee. Observers serving for any five or more candidates shall have their certificates signed by those candidates. Observers appointed to a precinct may file their certificates of appointment with the voting location manager of the precinct at the meeting on the evening prior to the election, or with the voting location manager of the precinct on the day of the election. Observers appointed to the office of the board to observe the casting of absent voter's ballots in person prior to the day of the election may file their certificates with the director of the board of elections the day before or on the day that the observers are scheduled to serve at the office of the board.

Upon the filing of a certificate, the person named as observer in the certificate shall be permitted to be in and about the applicable polling place during the casting of the ballots and shall be permitted to watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls. The observer also may inspect the counting of all ballots in the polling place or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed. Observers appointed to serve at the board of elections on the day of an election under

this section may observe at the board of elections and may observe 82  
 at any precinct in the county. The precinct election officials 83  
 shall protect such observers in all of the rights and privileges 84  
 granted to them by Title XXXV of the Revised Code. 85

(D) No persons other than the precinct election officials, 86  
 the observers, a police officer, other persons who are detailed to 87  
 any precinct on request of the board of elections, or the 88  
 secretary of state or the secretary of state's legal 89  
 representative shall be admitted to the polling place, or any room 90  
 in which a board of elections is counting ballots, after the 91  
 closing of the polls until the counting, certifying, and signing 92  
 of the final returns of each election have been completed. 93

(E) Not later than four p.m. of the twentieth day prior to an 94  
 election at which questions are to be submitted to a vote of the 95  
 people, any committee that in good faith advocates or opposes a 96  
 measure may file a petition with the board of any county asking 97  
 that the petitioners be recognized as the committee entitled to 98  
 appoint observers to the count at the election. If more than one 99  
 committee alleging themselves to advocate or oppose the same 100  
 measure file such a petition, the board shall decide and announce 101  
 by registered mail to each committee not less than twelve days 102  
 immediately preceding the election which committee is recognized 103  
 as being entitled to appoint observers. The decision shall not be 104  
 final, but any aggrieved party may institute mandamus proceedings 105  
 in the court of common pleas of the county in which the board has 106  
 jurisdiction to compel the precinct election officials to accept 107  
 the appointees of such aggrieved party. Any such recognized 108  
 committee may appoint an observer to the count in each precinct. 109  
 Committees appointing observers shall notify the board of 110  
 elections of the names and addresses of its appointees and the 111  
 precincts at which they shall serve. Notification shall take place 112

not less than eleven days before the election on forms prescribed 113  
 by the secretary of state and may be amended by filing an 114  
 amendment with the board of elections at any time until four p.m. 115  
 on the day before the election. A person so appointed shall file 116  
 the person's certificate of appointment with the voting location 117  
 manager in the precinct in which the person has been appointed to 118  
 serve. Observers shall file their certificates before the polls 119  
 are closed. In no case shall more than six observers be appointed 120  
 for any one election in any one precinct. If more than three 121  
 questions are to be voted on, the committees which have appointed 122  
 observers may agree upon not to exceed six observers, and the 123  
 precinct election officials shall appoint such observers. If such 124  
 committees fail to agree, the precinct election officials shall 125  
 appoint six observers from the appointees so certified, in such 126  
 manner that each side of the several questions shall be 127  
 represented. 128

(F) No person shall serve as an observer at any precinct or 129  
 at the board of elections unless the board of elections of the 130  
 county in which such observer is to serve has first been notified 131  
 of the name, address, and location at which such observer is to 132  
 serve. Notification to the board of elections shall be given by 133  
 the political party, group of candidates, or committee appointing 134  
 such observer as prescribed in this section. No such observers 135  
 shall receive any compensation from the county, municipal 136  
 corporation, or township, and they shall take the following oath, 137  
 to be administered by one of the precinct election officials: 138

"You do solemnly swear that you will faithfully and 139  
 impartially discharge the duties as an official observer, assigned 140  
 by law; that you will not cause any delay to persons offering to 141  
 vote; and that you will not disclose or communicate to any person 142  
 how any elector has voted at such election." 143

Sec. 3505.331. (A) After declaring the official results of a 144  
general election or a presidential primary election, the board of 145  
elections shall conduct an audit of those results in accordance 146  
with this section. The board may conduct an audit of the official 147  
results of any other election in accordance with this section. 148  
Except as otherwise provided in this division, the board shall 149  
begin the audit not earlier than six business days after it 150  
declares the official results and shall complete the audit not 151  
later than the twenty-first day after it declares the official 152  
results. If the board conducts a recount under Chapter 3515. of 153  
the Revised Code, the board shall begin the audit immediately 154  
after the board certifies the results of the recount and shall 155  
complete the audit not later than the fourteenth day after it 156  
certifies the results of the recount. 157

(B) The board shall conduct the audit in accordance with 158  
procedures prescribed by the secretary of state, which shall 159  
require all of the following: 160

(1) The board shall audit not less than three contested 161  
racess, questions, or issues, as directed by the secretary of 162  
state. If fewer than three contested races, questions, or issues 163  
appear on the ballot at the election, then the board shall audit 164  
every contested race, question, and issue. In any election, every 165  
contested race, question, or issue shall be eligible to be 166  
audited. 167

(2) Every ballot that was included in the canvass of the 168  
election returns shall be eligible to be audited, including 169  
regular ballots cast on the day of the election, absent voter's 170  
ballots, and provisional ballots. 171

(3) The board shall conduct the audit using a risk-limiting 172  
audit protocol in accordance with this division. A risk-limiting 173

audit protocol shall use statistical methods to limit to 174  
acceptable levels the risk of certifying an incorrect outcome for 175  
a particular race, question, or issue. The protocol shall require 176  
bipartisan teams of election officials to physically examine and 177  
hand count randomly sampled ballots and to continue the hand 178  
counting until the results of the hand count provide sufficiently 179  
strong evidence that a hand count of all of the ballots would 180  
confirm the declared election result or until all of the ballots 181  
have been hand counted, whichever occurs first. 182

(C)(1) The board shall give public notice of the times and 183  
places for preparing for and conducting the audit in accordance 184  
with section 121.22 of the Revised Code. Subject to division 185  
(C)(2) of this section, at all times while the board prepares for 186  
and conducts the audit, the board shall permit observers appointed 187  
under section 3505.21 of the Revised Code, representatives of the 188  
news media, and members of the general public to observe the audit 189  
and to inspect public records that are relevant to the audit. 190

(2)(a) No person other than a member of the board or a 191  
designated employee of the board shall be permitted to handle a 192  
ballot. 193

(b) If the board determines that it is necessary to limit the 194  
number of persons who may observe the audit because of physical 195  
space or other practical constraints, the board may limit the 196  
number of members of the general public who may be present, in 197  
accordance with procedures prescribed by the secretary of state. 198  
The board shall not prevent any observer appointed under section 199  
3505.21 of the Revised Code or any representative of the news 200  
media from observing the audit. 201

(D)(1) Not later than five days after completing the audit, 202  
the board shall certify the results of the audit to the secretary 203

of state in the form and by the method prescribed by the secretary 204  
of state. The secretary of state shall make the results of the 205  
audit available to the public on the secretary of state's official 206  
web site. 207

(2) If the results of the completed audit indicate that the 208  
canvass or the previously declared official election results must 209  
be amended, the board promptly shall amend the canvass or issue an 210  
amended declaration of the official results, as applicable. 211

(E)(1) Except as otherwise provided in division (E)(2) of 212  
this section, as used in this section, "ballot" means a voter 213  
marked and voter verified paper ballot, as defined in section 214  
3506.022 of the Revised Code. 215

(2) For purposes of an audit of the official results of an 216  
election held before January 1, 2019, "ballot" means either a 217  
paper ballot or the relevant entry on a voter verified paper audit 218  
trail, as defined in section 3506.01 of the Revised Code. 219

**Sec. 3506.02.** ~~Voting~~ Subject to section 3506.022 of the 220  
Revised Code, voting machines, marking devices, and automatic 221  
 tabulating equipment may be adopted for use in elections in any 222  
 county in the following manner: 223

(A) By the board of elections; 224

(B) By the board of county commissioners of such county on 225  
 the recommendation of the board of elections; 226

(C) By the affirmative vote of a majority of the electors of 227  
 such county voting upon the question of the adoption of such 228  
 equipment in such county. 229

If a petition signed by electors equal in number to two per 230  
 cent of the total votes cast in the county for the office of 231  
 governor at the most recent general election for that office is 232



filed with the board of elections, such board shall submit to the electors of such county at the next general election occurring not less than ninety days thereafter the question "Shall voting machines, marking devices, and automatic tabulating equipment be adopted in the county of .....?" Upon the filing of such petition, the board of elections shall forthwith notify the board of county commissioners, and the board of county commissioners shall forthwith determine whether it would prefer to purchase or lease such equipment in whole or in part for cash and if so whether it will be necessary or advisable to issue bonds to provide funds for the purchase of such equipment, if adopted. If the board of county commissioners determines that it is necessary or advisable to issue bonds therefor, it shall by resolution provide for the submission on the same ballot, but as a separate issue, the question of issuing such bonds. The question of issuing such bonds shall be submitted as required by division (A) of section 3506.03 of the Revised Code.

Sec. 3506.022. Beginning in the year 2019, no county shall use any direct recording electronic voting machine or any marking device or automatic tabulating equipment that does not require the use of a voter marked and voter verified paper ballot.

As used in this section, "voter marked and voter verified paper ballot" means a paper ballot on which the voter records the voter's choices, either by hand or by use of a marking device that records the voter's choices on a paper ballot that the voter then must inspect for accuracy. "Voter marked and voter verified paper ballot" does not include a voter verified paper audit trail.

Sec. 3506.07. ~~No~~ (A) Subject to divisions (B) and (C) of this section, no automatic tabulating equipment shall be approved by the board of voting machine examiners or certified by the

secretary of state, or be purchased, rented, or otherwise 263  
 acquired, or used, unless ~~it~~ both of the following apply: 264

(1) It has been or is capable of being manufactured for use 265  
and distribution beyond a prototype ~~and.~~ 266

(2) It can be set by election officials, to examine ballots 267  
and to count votes accurately for each candidate, question, and 268  
issue, excluding any ballots marked contrary to the instructions 269  
printed on such ballots, ~~provided that such.~~ 270

(B) Automatic tabulating equipment shall not be required to 271  
count write-in votes or the votes on any ballots that have been 272  
voted other than at the regular polling place on election day. 273

(C) Automatic tabulating equipment that is designed to count 274  
votes marked by hand on a ballot using a writing instrument such 275  
as a pen or pencil shall count votes accurately for each 276  
candidate, question, and issue, regardless of the type of writing 277  
instrument the voter used to mark the ballot. 278

**Sec. 3506.19.** ~~On and after the first federal election that 279~~  
~~occurs after January 1, 2006, unless required sooner by the Help 280~~  
~~America Vote Act of 2002, each Each polling location and each 281~~  
~~office of a board of elections at which in-person absent voting is 282~~  
~~being conducted shall have available for use at all elections at 283~~  
~~least one ~~direct recording electronic~~ voting machine or marking 284~~  
~~device that is accessible for individuals with disabilities, 285~~  
~~including nonvisual accessibility for the blind and visually 286~~  
~~impaired, in a manner that provides the same opportunity for 287~~  
~~access and participation, including privacy and independence, as 288~~  
~~for other voters.~~ 289

**Sec. 3506.21.** (A) As used in this section, "optical scan 290  
 ballot" means a ballot that is marked by using a ~~specified~~ writing 291  
 instrument to fill in a designated position to record a voter's 292

candidate, question, or issue choice and that can be scanned and	293
electronically read in order to tabulate the vote.	294
(B)(1) In addition to marks that can be scanned and	295
electronically read by automatic tabulating equipment, any of the	296
following marks, if a majority of those marks are made in a	297
consistent manner throughout an optical scan ballot, shall be	298
counted as a valid vote:	299
(a) A candidate, question, or issue choice that has been	300
circled by the voter;	301
(b) An oval beside the candidate, question, or issue choice	302
that has been circled by the voter;	303
(c) An oval beside the candidate, question, or issue choice	304
that has been marked by the voter with an "x," a check mark, or	305
other recognizable mark;	306
(d) A candidate, question, or issue choice that has been	307
marked with a writing instrument that cannot be recognized by	308
automatic tabulating equipment.	309
(2) Marks made on an optical scan ballot in accordance with	310
division (B)(1) of this section shall be counted as valid votes	311
only if that optical scan ballot contains no marks that can be	312
scanned and electronically read by automatic tabulating equipment.	313
(3) If automatic tabulating equipment detects that more marks	314
were made on an optical scan ballot for a particular office,	315
question, or issue than the number of selections that a voter is	316
allowed by law to make for that office, question, or issue, the	317
voter's ballot shall be invalidated for that office, question, or	318
issue. The ballot shall not be invalidated for any other office,	319
question, or issue for which the automatic tabulating equipment	320
detects a vote to have been cast, in accordance with the law.	321

(C) The secretary of state may adopt rules under Chapter 119. 322  
of the Revised Code to authorize additional types of optical scan 323  
ballots and to specify the types of marks on those ballots that 324  
shall be counted as a valid vote to ensure consistency in the 325  
counting of ballots throughout the state. 326

(D)(1) A board of elections of a county that uses optical 327  
scan ballots and automatic tabulating equipment as the primary 328  
voting system for the county shall not tabulate the unofficial 329  
results of optical scan ballots voted on election day at a central 330  
location. 331

(2) A board of elections that provides for the tabulation at 332  
each precinct of voted ballots, and then, at a central location, 333  
combines those precinct ballot totals with ballot totals from 334  
other precincts, including optical scan ballots voted by absent 335  
voters, shall not be considered to be tabulating the unofficial 336  
results of optical scan ballots at a central location for the 337  
purpose of division (D)(1) of this section. 338

**Sec. 3506.22.** (A) ~~Beginning in the year 2013 and thereafter,~~ 339  
a A county that ~~selects,~~ on or after January 1, 2013, selected 340  
direct recording electronic voting machines as the primary voting 341  
system to be used in the county and not only for accessibility for 342  
individuals with disabilities as required under the Help America 343  
Vote Act of 2002 and section 3506.19 of the Revised Code and that 344  
continues to use direct recording electronic voting machines for 345  
that purpose shall acquire, if needed, sufficient direct recording 346  
electronic voting machines to meet the minimum number of direct 347  
recording electronic voting machines required to be established by 348  
the secretary of state under division (B) of this section. 349

(B) ~~Beginning in the year 2013 and every eight years~~ 350  
~~thereafter, the~~ The secretary of state shall establish, for each 351

county described in division (A) of this section, a minimum number 352  
of direct recording electronic voting machines that the county 353  
shall be required to have ~~if it elects to use direct recording~~ 354  
~~electronic voting machines as the primary voting system in the~~ 355  
~~county~~. The minimum number for each such county shall be 356  
calculated as follows: 357

(1) The total number of registered voters in the county as of 358  
the October deadline for voter registration for the ~~last~~ 2012 359  
presidential election or the average of the total number of 360  
registered voters in the county as of the October deadline for 361  
voter registration for the ~~last two~~ 2008 and 2012 presidential 362  
elections, whichever number is higher, minus the total number of 363  
absent voter's ballots cast and counted at the ~~last~~ 2012 364  
presidential election, shall be determined. 365

(2) The number resulting from the determination under 366  
division (B)(1) of this section shall be divided by one hundred 367  
seventy-five. 368

(3) Any fraction resulting from the calculation under 369  
division (B)(2) of this section shall be rounded up to the next 370  
whole number. 371

(C) A county that ~~selects~~ selected direct recording 372  
electronic voting machines as the primary voting system to be used 373  
in the county and not only for accessibility for individuals with 374  
disabilities as required under the Help America Vote Act of 2002 375  
and section 3506.19 of the Revised Code after May 2, 2006, but 376  
before the year 2013 and that continues to use direct recording 377  
~~electronic voting machines for that purpose shall do so in~~ 378  
~~accordance with~~ maintain the minimum number of direct recording 379  
~~electronic voting machines determined by the formula set forth in~~ 380  
Section 514.03 of Am. Sub. H.B. 66 of the 126th general assembly. 381

**Section 2.** That existing sections 3505.21, 3506.02, 3506.07, 382  
 3506.19, 3506.21, and 3506.22 of the Revised Code are hereby 383  
 repealed. 384

**Section 3.** That sections 3506.05 and 3506.10 of the Revised 385  
 Code be amended to read as follows: 386

**Sec. 3506.05.** (A) As used in this section: 387

(1) "Electronic pollbook" means an electronic list of 388  
 registered voters for a particular precinct or polling location 389  
 that may be transported to a polling location. 390

(2) Except when used as part of the phrase "tabulating 391  
 equipment" or "automatic tabulating equipment," "equipment" means 392  
 a voting machine, marking device, automatic tabulating equipment, 393  
 software, or an electronic pollbook. 394

(3) "Vendor" means the person that owns, manufactures, 395  
 distributes, or has the legal right to control the use of 396  
 equipment, or the person's agent. 397

(B) No voting machine, marking device, automatic tabulating 398  
 equipment, or software for the purpose of casting or tabulating 399  
 votes or for communications among systems involved in the 400  
 tabulation, storage, or casting of votes, and no electronic 401  
 pollbook, shall be purchased, leased, put in use, or continued to 402  
 be used, except for experimental use as provided in division (B) 403  
 of section 3506.04 of the Revised Code, unless it, a manual of 404  
 procedures governing its use, and training materials, service, and 405  
 other support arrangements have been certified by the secretary of 406  
 state and unless the board of elections of each county where the 407  
 equipment will be used has assured that a demonstration of the use 408  
 of the equipment has been made available to all interested 409  
 electors. The secretary of state shall appoint a board of voting 410

machine examiners to examine and approve equipment and its related  
 manuals and support arrangements. The board shall consist of four  
 members, who shall be appointed as follows:

(1) Two members appointed by the secretary of state-*i* 414

(2) One member appointed by either the speaker of the house 415  
 of representatives or the minority leader of the house of 416  
 representatives, whichever is a member of the opposite political 417  
 party from the one to which the secretary of state belongs-*i* 418

(3) One member appointed by either the president of the 419  
 senate or the minority leader of the senate, whichever is a member 420  
 of the opposite political party from the one to which the 421  
 secretary of state belongs. 422

In all cases of a tie vote or a disagreement in the board, if 423  
 no decision can be arrived at, the board shall submit the matter 424  
 in controversy to the secretary of state, who shall summarily 425  
 decide the question, and the secretary of state's decision shall 426  
 be final. Each member of the board shall be a competent and 427  
 experienced election officer or a person who is knowledgeable 428  
 about the operation of voting equipment and shall serve during the 429  
 secretary of state's term. Any vacancy on the board shall be 430  
 filled in the same manner as the original appointment. The 431  
 secretary of state shall provide staffing assistance to the board, 432  
 at the board's request. 433

For the member's service, each member of the board shall 434  
 receive three hundred dollars per day for each combination of 435  
 marking device, tabulating equipment, voting machine, or 436  
 electronic pollbook examined and reported, but in no event shall a 437  
 member receive more than six hundred dollars to examine and report 438  
 on any one marking device, item of tabulating equipment, voting 439  
 machine, or electronic pollbook. Each member of the board shall be 440

reimbursed for expenses the member incurs during an examination or 441  
during the performance of any related duties that may be required 442  
by the secretary of state. Reimbursement of these expenses shall 443  
be made in accordance with, and shall not exceed, the rates 444  
provided for under section 126.31 of the Revised Code. 445

Neither the secretary of state nor the board, nor any public 446  
officer who participates in the authorization, examination, 447  
testing, or purchase of equipment, shall have any pecuniary 448  
interest in the equipment or any affiliation with the vendor. 449

(C)(1) A vendor who desires to have the secretary of state 450  
certify equipment shall first submit the equipment, all current 451  
related procedural manuals, and a current description of all 452  
related support arrangements to the board of voting machine 453  
examiners for examination, testing, and approval. The submission 454  
shall be accompanied by a fee of two thousand four hundred dollars 455  
and a detailed explanation of the construction and method of 456  
operation of the equipment, a full statement of its advantages, 457  
and a list of the patents and copyrights used in operations 458  
essential to the processes of vote recording and tabulating, vote 459  
storage, system security, pollbook storage and security, and other 460  
crucial operations of the equipment as may be determined by the 461  
board. An additional fee, in an amount to be set by rules 462  
promulgated by the board, may be imposed to pay for the costs of 463  
alternative testing or testing by persons other than board 464  
members, record-keeping, and other extraordinary costs incurred in 465  
the examination process. Moneys not used shall be returned to the 466  
person or entity submitting the equipment for examination. 467

(2) Fees collected by the secretary of state under this 468  
section shall be deposited into the state treasury to the credit 469  
of the board of voting machine examiners fund, which is hereby 470



created. All moneys credited to this fund shall be used solely for 471  
the purpose of paying for the services and expenses of each member 472  
of the board or for other expenses incurred relating to the 473  
examination, testing, reporting, or certification of equipment, 474  
the performance of any related duties as required by the secretary 475  
of state, or the reimbursement of any person submitting an 476  
examination fee as provided in this chapter. 477

(D) Within sixty days after the submission of the equipment 478  
and payment of the fee, or as soon thereafter as is reasonably 479  
practicable, but in any event within not more than ninety days 480  
after the submission and payment, the board of voting machine 481  
examiners shall examine the equipment and file with the secretary 482  
of state a written report on the equipment with its 483  
recommendations and, if applicable, its determination or condition 484  
of approval regarding whether the equipment, manual, and other 485  
related materials or arrangements meet the criteria set forth in 486  
sections 3506.07 and 3506.10 of the Revised Code and can be safely 487  
used by the voters at elections under the conditions prescribed in 488  
Title XXXV of the Revised Code, or a written statement of reasons 489  
for which testing requires a longer period. The board may grant 490  
temporary approval for the purpose of allowing experimental use of 491  
equipment. If the board finds that the equipment meets any 492  
applicable criteria set forth in sections 3506.06, 3506.07, and 493  
3506.10 of the Revised Code, can be used safely and, if 494  
applicable, can be depended upon to record and count accurately 495  
and continuously the votes of electors, and has the capacity to be 496  
warranted, maintained, and serviced, it shall approve the 497  
equipment and recommend that the secretary of state certify the 498  
equipment. The secretary of state shall notify all boards of 499  
elections of any such certification. Equipment of the same model 500  
and make, if it operates in an identical manner, may then be 501

adopted for use at elections. 502

(E) The vendor shall notify the secretary of state, who shall 503  
then notify the board of voting machine examiners, of any 504  
enhancement and any significant adjustment to the hardware or 505  
software that could result in a patent or copyright change or that 506  
significantly alters the methods of recording voter intent, system 507  
security, voter privacy, retention of the vote, communication of 508  
records, and connections between the system and other systems. The 509  
vendor shall provide the secretary of state with an updated 510  
operations manual for the equipment, and the secretary of state 511  
shall forward the manual to the board. Upon receiving such a 512  
notification and manual, the board may require the vendor to 513  
submit the equipment to an examination and test in order for the 514  
equipment to remain certified. The board or the secretary of state 515  
shall periodically examine, test, and inspect certified equipment 516  
to determine continued compliance with the requirements of this 517  
chapter and the initial certification. Any examination, test, or 518  
inspection conducted for the purpose of continuing certification 519  
of any equipment in which a significant problem has been uncovered 520  
or in which a record of continuing problems exists shall be 521  
performed pursuant to divisions (C) and (D) of this section, in 522  
the same manner as the examination, test, or inspection is 523  
performed for initial approval and certification. 524

(F) If, at any time after the certification of equipment, the 525  
board of voting machine examiners or the secretary of state is 526  
notified by a board of elections of any significant problem with 527  
the equipment or determines that the equipment fails to meet the 528  
requirements necessary for approval or continued compliance with 529  
the requirements of this chapter, or if the board of voting 530  
machine examiners determines that there are significant 531  
enhancements or adjustments to the hardware or software, or if 532

notice of such enhancements or adjustments has not been given as 533  
 required by division (E) of this section, the secretary of state 534  
 shall notify the users and vendors of that equipment that 535  
 certification of the equipment may be withdrawn. 536

(G)(1) The notice given by the secretary of state under 537  
 division (F) of this section shall be in writing and shall specify 538  
 both of the following: 539

(a) The reasons why the certification may be withdrawn; 540

(b) The date on which certification will be withdrawn unless 541  
 the vendor takes satisfactory corrective measures or explains why 542  
 there are no problems with the equipment or why the enhancements 543  
 or adjustments to the equipment are not significant. 544

(2) A vendor who receives a notice under division (F) of this 545  
 section shall, within thirty days after receiving it, submit to 546  
 the board of voting machine examiners in writing a description of 547  
 the corrective measures taken and the date on which they were 548  
 taken, or the explanation required under division (G)(1)(b) of 549  
 this section. 550

(3) Not later than fifteen days after receiving a written 551  
 description or explanation under division (G)(2) of this section 552  
 from a vendor, the board shall determine whether the corrective 553  
 measures taken or the explanation is satisfactory to allow 554  
 continued certification of the equipment, and the secretary of 555  
 state shall send the vendor a written notice of the board's 556  
 determination, specifying the reasons for it. If the board has 557  
 determined that the measures taken or the explanation given is 558  
 unsatisfactory, the notice shall include the effective date of 559  
 withdrawal of the certification. This date may be different from 560  
 the date originally specified in division (G)(1)(b) of this 561  
 section. 562

(4) A vendor who receives a notice under division (G)(3) of this section indicating a decision to withdraw certification may, within thirty days after receiving it, request in writing that the board hold a hearing to reconsider its decision. Any interested party shall be given the opportunity to submit testimony or documentation in support of or in opposition to the board's recommendation to withdraw certification. Failure of the vendor to take appropriate steps as described in division (G)(1)(b) or to comply with division (G)(2) of this section results in a waiver of the vendor's rights under division (G)(4) of this section.

(H)(1) The secretary of state, in consultation with the board of voting machine examiners, shall establish, by rule, guidelines for the approval, certification, and continued certification of the voting machines, marking devices, tabulating equipment, and electronic pollbooks to be used under Title XXXV of the Revised Code. The guidelines shall establish procedures requiring vendors or computer software developers to place in escrow with an independent escrow agent approved by the secretary of state a copy of all source code and related documentation, together with periodic updates as they become known or available. The secretary of state shall require that the documentation include a system configuration and that the source code include all relevant program statements in low- or high-level languages. As used in this division, "source code" does not include variable codes created for specific elections.

(2) Nothing in any rule adopted under division (H) of this section shall be construed to limit the ability of the secretary of state to follow or adopt, or to preclude the secretary of state from following or adopting, any guidelines proposed by the federal election commission, any entity authorized by the federal election commission to propose guidelines, the election assistance

commission, or any entity authorized by the election assistance  
commission to propose guidelines.

~~(3)(a) Before the initial certification of any direct  
recording electronic voting machine with a voter verified paper  
audit trail, and as a condition for the continued certification  
and use of those machines, the secretary of state shall establish,  
by rule, standards for the certification of those machines. Those  
standards shall include, but are not limited to, all of the  
following:~~

~~(i) A definition of a voter verified paper audit trail as a  
paper record of the voter's choices that is verified by the voter  
prior to the casting of the voter's ballot and that is securely  
retained by the board of elections;~~

~~(ii) Requirements that the voter verified paper audit trail  
shall not be retained by any voter and shall not contain  
individual voter information;~~

~~(iii) A prohibition against the production by any direct  
recording electronic voting machine of anything that legally could  
be removed by the voter from the polling place, such as a receipt  
or voter confirmation;~~

~~(iv) A requirement that paper used in producing a voter  
verified paper audit trail be sturdy, clean, and resistant to  
degradation;~~

~~(v) A requirement that the voter verified paper audit trail  
shall be capable of being optically scanned for the purpose of  
conducting a recount or other audit of the voting machine and  
shall be readable in a manner that makes the voter's ballot  
choices obvious to the voter without the use of computer or  
electronic codes;~~

~~(vi) A requirement, for office type ballots, that the voter verified paper audit trail include the name of each candidate selected by the voter;~~

~~(vii) A requirement, for questions and issues ballots, that the voter verified paper audit trail include the title of the question or issue, the name of the entity that placed the question or issue on the ballot, and the voter's ballot selection on that question or issue, but not the entire text of the question or issue.~~

~~(b) The secretary of state, by rule adopted under Chapter 119. of the Revised Code, may waive the requirement under division (H)(3)(a)(v) of this section, if the secretary of state determines that the requirement is cost prohibitive.~~

~~(4)(a)~~ Except as otherwise provided in divisions (H)~~(4)~~(3)(b) and (c) of this section, any voting machine, marking device, or automatic tabulating equipment used in this state shall meet, as a condition of continued certification and use, the voting system standards adopted by the federal election commission in 2002 or the voluntary voting system guidelines most recently adopted by the federal election assistance commission. A voting machine, marking device, or automatic tabulating equipment initially certified or acquired on or after December 1, 2008, also shall have the most recent federal certification number issued by the election assistance commission.

(b) Division (H)~~(4)~~(3)(a) of this section does not apply to any voting machine, marking device, or automatic tabulating equipment that the federal election assistance commission does not certify as part of its testing and certification program.

(c) A county that acquires additional voting machines, marking devices, or automatic tabulating equipment on or after

December 1, 2008, shall not be considered to have acquired those  
 machines, devices, or equipment on or after December 1, 2008, for  
 the purpose of division (H)~~(4)~~(3)(a) of this section if all of the  
 following apply:

(i) The voting machines, marking devices, or automatic  
 tabulating equipment acquired are the same as the machines,  
 devices, or equipment currently used in that county.

(ii) The acquisition of the voting machines, marking devices,  
 or automatic tabulating equipment does not replace or change the  
 primary voting system used in that county.

(iii) The acquisition of the voting machines, marking  
 devices, or automatic tabulating equipment is for the purpose of  
 replacing inoperable machines, devices, or equipment or for the  
 purpose of providing additional machines, devices, or equipment  
 required to meet the allocation requirements established pursuant  
 to division (I) of section 3501.11 of the Revised Code.

**Sec. 3506.10.** No voting machine shall be approved by the  
 board of voting machine examiners or certified by the secretary of  
 state, or be purchased, rented, or otherwise acquired, or used,  
 except when specifically allowed for experimental use, as provided  
 in section 3506.04 of the Revised Code, unless it fulfills the  
 following requirements:

(A) It shall permit and require voting in absolute secrecy,  
 and shall be so constructed that no person can see or know for  
 whom any other elector has voted or is voting, except an elector  
 who is assisting a voter as prescribed by section 3505.24 of the  
 Revised Code.

(B) It shall permit each elector to vote at any election for  
 all persons and offices for whom and for which the elector is

lawfully entitled to vote, whether or not the name of any such  
 person appears on a ballot label as a candidate; to vote for as  
 many persons for an office as the elector is entitled to vote for;  
 and to vote for or against any question upon which the elector is  
 entitled to vote.

(C) It shall preclude each elector from voting for any  
 candidate or upon any question for whom or upon which the elector  
 is not entitled to vote, from voting for more persons for any  
 office than the elector is entitled to vote for, and from voting  
 for any candidates for the same office or upon any question more  
 than once.

(D) It shall permit each voter to deposit, write in, or  
 affix, upon devices provided for that purpose, ballots containing  
 the names of persons for whom the voter desires to vote, whose  
 names do not appear upon the voting machine. Those devices shall  
 be susceptible of identification as to party affiliations when  
 used at a primary election.

(E) It shall permit each elector to change the elector's vote  
 for any candidate or upon any question appearing upon the ballot  
 labels, up to the time the elector starts to register the  
 elector's vote.

(F) It shall permit each elector, at all presidential  
 elections, by one device to vote for candidates of one party for  
 president, vice-president, and presidential electors.

(G) It shall be capable of adjustment by election officers so  
 as to permit each elector, at a primary election, to vote only for  
 the candidates of the party with which the elector has declared  
 the elector's affiliation and shall preclude the elector from  
 voting for any candidate seeking nomination by any other political  
 party; and to vote for the candidates for nonpartisan nomination



or election. 712

(H) It shall have separate voting devices for candidates and 713  
questions, which shall be arranged in separate rows or columns. It 714  
shall be so arranged that one or more adjacent rows or columns may 715  
be assigned to the candidates of each political party at primary 716  
elections. 717

(I) It shall have a counter, or other device, the register of 718  
which is visible from the outside of the machine, and which will 719  
show at any time during the voting the total number of electors 720  
who have voted; and also a protective counter, or other device, 721  
the register of which cannot be reset, which will record the 722  
cumulative total number of movements of the internal counters. 723

(J) It shall be provided with locks and seals by the use of 724  
which, immediately after the polls are closed or the operation of 725  
the machine for an election is completed, no further changes to 726  
the internal counters can be allowed. 727

(K) It shall have the capacity to contain the names of 728  
candidates constituting the tickets of at least five political 729  
parties, and independent groups and such number of questions not 730  
exceeding fifteen as the secretary of state shall specify. 731

(L) It shall be durably constructed of material of good 732  
quality in a neat and workerlike manner, and in form that shall 733  
make it safely transportable. 734

(M) It shall be so constructed that a voter may readily learn 735  
the method of operating it, may expeditiously cast a vote for all 736  
candidates of the voter's choice, and when operated properly shall 737  
register and record correctly and accurately every vote cast. 738

(N) It shall be provided with a screen, hood, or curtain, 739  
which will conceal the voter while voting. During the voting, it 740

shall preclude every person from seeing or knowing the number of  
 votes registered for any candidate or question and from tampering  
 with any of the internal counters.

(O) It shall not provide to a voter any type of receipt or  
 voter confirmation that the voter legally may retain after leaving  
 the polling place.

~~(P) On and after the first federal election that occurs after  
 January 1, 2006, unless required sooner by the Help America Vote  
 Act of 2002, if the voting machine is a direct recording  
 electronic voting machine, it shall include a voter verified paper  
 audit trail.~~

Before any voting machine is purchased, rented, or otherwise  
 acquired, or used, the person or corporation owning or  
 manufacturing that machine or having the legal right to control  
 the use of that machine shall give an adequate guarantee in  
 writing and post a bond in an amount sufficient to cover the cost  
 of any recount or new election resulting from or directly related  
 to the use or malfunction of the equipment, accompanied by  
 satisfactory surety, all as determined by the secretary of state,  
 with the board of county commissioners, guaranteeing and securing  
 that those machines have been and continue to be certified by the  
 secretary of state in accordance with section 3506.05 of the  
 Revised Code, comply fully with the requirements of this section,  
 and will correctly, accurately, and continuously register and  
 record every vote cast, and further guaranteeing those machines  
 against defects in workmanship and materials for a period of five  
 years from the date of their acquisition.

**Section 4.** That existing sections 3506.05 and 3506.10 of the  
 Revised Code are hereby repealed.

**Section 5.** That section 3506.22 of the Revised Code, as

amended by Section 1 of this act, is hereby repealed. 771

**Section 6.** Sections 3, 4, and 5 of this act take effect 772  
January 1, 2019. 773

**Section 7."** 774

In line 25, delete "2" and insert "8"; delete "3" and insert 775  
"9" 776

In line 26, delete "2." and insert "8." 777

In line 56, delete "3." and insert "9." 778

In line 83, delete "5" and insert "11" 779

In line 90, delete "5" and insert "11" 780

In line 105, delete "4." and insert "10." 781

In line 117, delete "5." and insert "11." 782

In line 118, delete "2" and insert "8"; delete "4" and insert 783  
"10" 784

In line 146, delete "3" and insert "9" 785

In line 175, delete "2" and insert "8" 786

In line 182, delete "6." and insert "12." 787

In line 187, delete "1, 2, 3," and insert "10, 11, 12,;" 788  
delete "5" and insert "11" 789

The motion was \_\_\_\_\_ agreed to.